



FITCH EVEN TABIN AND FLANNERY
120 SOUTH LA SALLE STREET
SUITE 1600
CHICAGO IL 60603-3406

COPY MAILED

MAR 15 2004

OFFICE OF PETITIONS

In re Application of :
Cavallaro et al. : DECISION GRANTING
Application No. 10/616,598 : PETITION
Filed: 10 July, 2003 :
Attorney Docket CE09078R (74086) :

This is a decision on the petition, filed on 11 December, 2003, requesting that the above-identified application, without drawings, be accorded a filing date of 10 July, 2003.

The application was filed on 10 July, 2003, without drawings.¹ Accordingly, on 6 October, 2003, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that no filing date had been assigned because the application was deposited without drawings, and requiring drawings be filed if necessary. An abstract in compliance with 37 CFR 1.72(b) was also required.

In response, on 11 December, 2003 (certificate of mailing date 8 December, 2003) the present petition was filed. The petition states that the drawings are not necessary for an understanding of the subject matter sought to be patented. Petitioners request that the application, without drawings, be accorded a filing date of 10 July, 2003.

It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).² A review of the record reveals that Claims 18-21 are method claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention.

¹35 U.S.C. § 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented."

²MPEP 601.01(f).

Accordingly, the application, as filed, is entitled to a filing date.

The petition is granted. The \$130.00 petition fee is unnecessary, and will be credited to counsel's deposit account, No. 06-1135 as authorized in the present petition.

The "Notice of Incomplete Nonprovisional Application" mailed on 8 October, 2003, was sent in error and is hereby vacated to the extent that it stated that the application was incomplete because the application was deposited without drawings.

It is noted that petitioners have not filed an abstract in compliance with 37 CFR 1.72(b).

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 10 July, 2003, without drawings.

Telephone inquiries specific to this matter should be directed to the undersigned at 703.308.6918.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions